

October 12, 2023

VIA CM/ECF

Hon. Gregory H. Woods
United States District Court, Southern District of New York
500 Pearl Street, Room 1920, New York, NY 10007

Re: *U.S. Bank National Association, et al. v. The Charitable Donor Advised Fund, L.P. and CLO HoldCo Ltd.* (Case No. 1:21-cv-11059-GHW)

Dear Judge Woods,

Plaintiffs/Counter-Defendants U.S. Bank, National Association, in its capacity as trustee (the “Trustee”), Acis Capital Management, L.P. (“ACM”), and Joshua N. Terry (“Mr. Terry,” and, together with ACM and the Trustee, “Plaintiffs”), Defendants/Counter-Plaintiffs Charitable DAF Fund, LP a/k/a The Charitable Donor Advised Fund, L.P. (“DAF”), CLOH HoldCo, Ltd. (“CLOH”), and NexPoint Diversified Real Estate Trust (“NexPoint,” and, together with DAF and CLOH, “Defendants”), and Counter-Defendant Brigade Capital Management, LP (“Brigade,” and, collective with Plaintiffs and Defendants, the “Parties”) jointly submit this letter pursuant to Paragraph 1.E of the Court’s Individual Rules of Practice in Civil Cases to request a brief extension of expert discovery and summary judgment motion deadlines set out in the Court’s Case Management Plan and Scheduling Order (the “CMO,” Dkt. 76, as amended by Dkts. 159, 191, and 196). This is the fourth request for an extension. All Parties consent to the Request. Counter-Defendant Highland CLO Funding, Ltd. (“HCLOF”) is not a party to this letter and takes no position with respect to the extension of the deadlines as it is not participating in discovery per the Court’s August 4, 2023 Order (Dkt. 172).

The Parties have largely completed fact discovery but had to extend certain deposition deadlines due to scheduling challenges (Dkts. 191 and 196) and there are pending Motions to Compel filed by DAF and CLOH (Dkts. 205 and 206) (“Motions to Compel”). Further, the deposition of Mr. James Dondero has not been completed. Accordingly, the Parties have agreed that additional time is needed for expert discovery. The Parties therefore respectfully seek an extension of expert discovery deadlines by extending the deadline for party-proponents of a claim to offer initial expert disclosures from October 15, 2023 to November 3, 2023 (CMO, para 8(c)); extending the deadline for party-opponents of a claim to offer opposing/rebuttal expert disclosures from November 10, 2023 to December 13, 2023 (CMO, para 8(c)); and extending the close of expert discovery from December 10, 2023 to January 12, 2024 (CMO, para 8(b)). The Parties also seek a corresponding extension of the deadline to file motions for summary judgment from January 10, 2024 to February 13, 2024 (CMO, para 10).

The Parties and HCLOF respectfully reserve their rights to seek additional revisions. Further, CLOH and DAF respectfully specifically reserve their rights to seek additional revisions depending upon the resolution of their pending Motions to Compel and of HCLOF’s pending motion to dismiss (Dkt. 177).

In making this proposal, none of the Parties waive any of their respective substantive or procedural rights, all of which they respectively reserve.

The Parties thank the Court for its attention to this matter.

Respectfully Submitted,

/s/ Blair Adams

Jonathan E. Pickhardt
Blair A. Adams
Brendan Carroll
Misha Boutilier
Jeffrey Arnier
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

***Counsel for Plaintiffs ACIS Capital
Management, L.P., and Joshua N. Terry***

/s/ Mark Kotwick

Mark D. Kotwick
Thomas Ross Hooper
Julie J. Hong
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
(202) 574-1200

***Counsel for Plaintiff U.S. Bank National
Association, as Trustee***

/s/ Jason C. Hegt

Jason C. Hegt
Alexis Kellert Godfrey
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020 (212) 906-1200
Jason.Hegt@lw.com
Alexis.Godfrey@lw.com
***Counsel for Counter-Defendant Brigade
Capital Management, LP***

/s/ Sawnie A. McEntire

Sawnie A. McEntire
Admitted Pro Hac Vice
Texas Bar No.: 13590100
Fed ID #3476
PARSONS MCENTIRE MCCLEARY PLLC
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201
Telephone: (214) 237-4300
Fax: (214) 237-4340
E-mail: smcentire@pmmlaw.com

Roger L. McCleary
Admitted Pro Hac Vice
Texas Bar No.: 133937000
Fed. ID #205
PARSONS MCENTIRE MCCLEARY PLLC
One Riverway, Suite 1800
Houston, Texas 77056
Telephone: (713) 960-7315
Fax: (713) 960-7347
E-mail: rmccleary@pmmlaw.com

Lindsey R. Skibell
E-mail: rskibell@glennagre.com
Jewel K. Tewiah
E-mail: jtewiah@glennagre.com
GLENN AGRE BERGMAN & FUENTES LLP
55 Hudson Yards, 20th Floor
New York, NY 10001
Telephone: 212.358.5600
***Counsel for CLO Holdco, Ltd. and The
Charitable Donor Advised Fund, L.P.***

/s/ Kevin N. Colquitt
Mazin A. Sbaiti
Kevin N. Colquitt (*admitted pro hac vice*)
Griffin S. Rubin (*admitted pro hac vice*)
SBAITI & COMPANY, PLLC
2200 Ross Ave., Suite 4900W
Dallas, TX 75201
(214) 432-2899
***Counsel for NexPoint Diversified Real
Estate Trust***